

HOUSE BILL No. 4470

March 19, 2013, Introduced by Reps. Dianda, Yanez, Lamonte, Driskell, Cochran, Abed and Brinks and referred to the Committee on Elections and Ethics.

A bill to establish standards of ethical conduct for employees and officials in the executive branch of state government; to impose certain conditions on employees and officials in the executive branch of state government and enhance accountability; to require public disclosure by employees and officials in the executive branch of state government of certain transactions; to require the filing of a transactional disclosure statement and other reports; to create a board of ethics and provide for its power and duties; to prohibit persons from attempting to induce executive branch officials and employees to violate this act; to provide for the powers and duties of certain state and local governmental officers and entities; to require the promulgation of rules; to provide for enforcement; to prescribe penalties and

provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 1. DEFINITIONS; GENERAL PROVISIONS.

2 Sec. 101. This act shall be known and may be cited as the
3 "ethics act for executive branch officials and employees".

4 Sec. 103. This act is intended to implement section 10 of
5 article IV of the state constitution of 1963. It is the intent of
6 the legislature that this act shall be taken into consideration in
7 determining the construction and effect of section 10 of article IV
8 of the state constitution of 1963.

9 Sec. 105. As used in this act:

10 (a) "Anything of value" means a tangible or intangible item
11 that has economic value and that could reasonably be considered to
12 be an advantage or of worth, use, or service to the person upon
13 whom it is conferred. Anything of value does not include any of the
14 following:

15 (i) An unsolicited token or award with a value of less than
16 \$150.00.

17 (ii) An unsolicited advertising item with a value of less than
18 \$50.00.

19 (iii) An unsolicited publication with a market value of less
20 than \$50.00 on an annual basis.

21 (iv) A discount afforded to the general public or a specified
22 group or occupation under normal business conditions. However, the
23 discount may not be based on the fact of public service unless it
24 is a discount program approved by the board.

25 (v) A contribution to a bona fide charity, made in response to

1 a direct solicitation from an executive official or employee or a
2 person acting at his or her direction.

3 (vi) An unsolicited benefit conferred by a person or business
4 if the economic value totals less than \$100.00 per calendar year
5 and if there is no express or implied understanding or agreement
6 that a vote, official action, or decision of an executive official
7 or employee will be influenced.

8 (vii) A tangible or intangible item for a legitimate
9 educational purpose or benefit.

10 (viii) Campaign contributions that are made and reported under
11 the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to
12 169.282.

13 (ix) Compensation or reimbursement of expenses from this state
14 for duties of the office or position.

15 (b) "Board" means the state board of ethics created under
16 section 401, except where the context clearly requires a different
17 definition.

18 (c) "Confidential information" means information made
19 confidential by law or information that is conveyed or accepted
20 with the understanding that the information will be used for
21 official purposes only.

22 (d) "Conflict of interest" means a close economic association
23 or personal relationship between an executive official or employee
24 and a person that is likely to be substantially affected by an
25 official action or decision of an executive official or employee
26 that a reasonable person would believe conflicts with the public
27 duty or obligation of the executive official or employee to

1 exercise objective independent judgment or that a reasonable person
2 would believe creates the appearance that the person may have undue
3 access to confidential information or may otherwise receive favored
4 treatment regarding a public action. Conflict of interest does not
5 include a contract arising out of the status of being a student at
6 a state institution of higher education authorized by section 5 or
7 6 of article VIII of the state constitution of 1963 if the student
8 is elected or appointed to the governing board of the institution.

9 (e) "Employee" means an employee, classified or unclassified,
10 of the executive branch of state government.

11 (f) "Executive official" means any of the following
12 individuals within the executive branch of state government:

13 (i) An individual appointed by the governor.

14 (ii) An individual appointed by an official or body within the
15 executive branch other than the governor who is not a member of the
16 state classified service.

17 (iii) A member of a board of control of an institution of higher
18 education authorized by section 6 of article VIII of the state
19 constitution of 1963.

20 (iv) A president of an institution of higher education
21 authorized by section 5 or 6 of article VIII of the state
22 constitution of 1963 or a deputy of the president when exercising a
23 power vested in the president.

24 (v) An elected official in the executive branch of state
25 government, including the following:

26 (A) The governor.

27 (B) The lieutenant governor.

1 (C) The attorney general.

2 (D) The secretary of state.

3 (E) A member of the state board of education.

4 (F) A regent of the university of Michigan.

5 (G) A member of the board of trustees of Michigan state
6 university.

7 (H) A member of the board of governors of Wayne state
8 university.

9 (g) "Governmental decision" means a determination, action,
10 vote, or disposition upon a motion, proposal, recommendation,
11 resolution, ordinance, or measure on which a vote by the members of
12 a governmental entity is required and by which a governmental
13 entity formulates or effectuates public policy.

14 (h) "Immediate family" means a child residing in the
15 individual's household, a spouse of the individual, or a person
16 claimed by that individual or that individual's spouse as a
17 dependent for federal income tax purposes.

18 (i) "Outside employer or business" means any of the following:

19 (i) An activity, other than service to the governmental entity,
20 from which the executive official or employee receives compensation
21 for services rendered or goods sold or produced.

22 (ii) An entity, other than the governmental entity, if the
23 executive official or employee is a member, official, director, or
24 employee of the entity and he or she receives compensation for
25 services rendered or goods sold or produced by the entity.

26 Compensation does not include reimbursement for necessary expenses,
27 including travel expenses.

1 (iii) An entity in which the executive official or employee has
2 an ownership interest, except a corporation in which the executive
3 official or employee owns less than 10% of the outstanding stock.

4 (j) "Person" means an individual, sole proprietorship,
5 partnership, limited partnership, limited liability company,
6 corporation, association, or other legal entity.

7 (k) "Transactional disclosure statement" means a report that
8 this act requires an executive official or employee to file in a
9 form prescribed by the board to reveal an actual or potential
10 conflict of interest or violation of this act and that includes all
11 of the following information:

12 (i) A full description of the circumstances that present a
13 potential or actual conflict of interest or violation of the act.

14 (ii) If applicable, the reason for the executive official's or
15 employee's abstention or refraining from acting.

16 CHAPTER 2. CODE OF ETHICS.

17 Sec. 201. Except as otherwise provided by law, an executive
18 official or employee shall not use his or her public position, or
19 take or fail to take action, to obtain anything of value for
20 himself or herself or any other person or entity.

21 Sec. 203. An executive official or employee shall not solicit
22 or accept anything of value for personal benefit in connection with
23 his or her official responsibilities.

24 Sec. 205. An executive official shall not represent for
25 compensation a person in a matter that the person has before the
26 executive or legislative branch of state government.

27 Sec. 207. (1) An executive official or employee or a former

1 executive official or former employee shall not use or disclose
2 confidential information to further his or her own or another
3 person's interests, except to the extent permitted by law.

4 (2) An executive official or employee shall not engage in a
5 business transaction in which the executive official or employee
6 may profit from his or her official position or authority or
7 benefit financially from confidential information that the
8 executive official or employee has obtained or may obtain by reason
9 of that position or authority. Instruction that is done outside of
10 regularly scheduled working hours or during annual leave or
11 vacation time is not a business transaction under this subsection
12 if the instructor does not have any direct dealing with or
13 influence on the employing or contracting entity associated with
14 the instructor's official duties in service to or employment with
15 this state.

16 Sec. 209. (1) An executive official or employee or an outside
17 employer or business with which the executive official or employee
18 is associated shall not enter into a contract valued at \$1,500.00
19 or more with this state or a political subdivision of this state
20 unless the contract is awarded through an open and public
21 competitive process that includes prior public notice and
22 subsequent availability for public inspection of the proposals
23 considered and the contract awarded.

24 (2) An executive official or employee who has or later
25 acquires an interest in an actual or proposed contract with this
26 state or a political subdivision of this state shall publicly
27 disclose the nature and extent of that interest as required by this

1 chapter.

2 (3) A contract or agreement that is executed in violation of
3 this section is voidable only if the person that entered into the
4 contract or took assignment of the contract had actual knowledge of
5 the prohibited conflict. If a person is other than an individual,
6 the actual knowledge must be that of an individual or body finally
7 approving the contract. A contract involving a prohibited conflict
8 of interest under this act is voidable only by a decree of a court
9 of proper jurisdiction. A decree of a court of proper jurisdiction
10 may provide for the reimbursement of a person for the reasonable
11 value of money, goods, material, labor, or services furnished under
12 the contract, to the extent that the governmental entity has
13 benefited. This subsection does not prohibit the parties from
14 reaching a settlement outside of court.

15 Sec. 211. (1) Except as provided in sections 213 and 215, an
16 executive official shall abstain from acting formally or informally
17 on a matter before the official or a governmental body of which he
18 or she is a member if he or she knows that acting on the matter, or
19 failing to act on the matter, may result in a conflict of interest
20 or a violation of this chapter.

21 (2) If an executive official is required to abstain from
22 acting on a matter, he or she shall file a transactional disclosure
23 statement with the board within 10 days of the abstention.

24 Sec. 213. Section 211 does not apply and an executive official
25 may vote on, make, or participate in making a governmental decision
26 that does not involve the award of a contract if all of the
27 following circumstances are present:

1 (a) The requisite quorum necessary for official action on the
2 governmental decision by the public entity to which the executive
3 official has been elected or appointed would not be available if
4 section 211 applied to bar the participation of the executive
5 official in the official action.

6 (b) The executive official is not paid for working more than
7 25 hours per week for this state or a political subdivision of this
8 state.

9 (c) The executive official verbally discloses any personal,
10 contractual, financial, business, or employment interest he or she
11 has in the governmental decision before the body acts on the
12 matter, the disclosure is made part of the public record of the
13 official action on the governmental decision, and a transactional
14 disclosure statement is filed with the board within 10 days of the
15 verbal disclosure.

16 Sec. 215. If a governmental decision involves the awarding of
17 a contract, section 211 does not apply and an executive official is
18 permitted to vote on, make, or participate in making the
19 governmental decision if all of the following circumstances are
20 present:

21 (a) All of the conditions of section 213 are fulfilled.

22 (b) The executive official will directly benefit from the
23 contract in an amount less than \$250.00 or less than 5% of the
24 public cost of the contract, whichever is less.

25 (c) The executive official files a sworn affidavit containing
26 the information described in section 213(c) with the governmental
27 entity making the governmental decision.

1 (d) The affidavit required by subdivision (c) is made a part
2 of the public record of the official action on the governmental
3 decision.

4 Sec. 217. An executive official or employee with direct
5 responsibility for the management of a contract for goods or
6 services on behalf of this state shall refrain from acting formally
7 or informally on a matter before the executive official or employee
8 if he or she knows that acting on the matter, or failing to act on
9 the matter, may result in a conflict of interest or a violation of
10 this act. If an executive official or employee is required to
11 abstain from acting on a matter under this section, he or she shall
12 file a transactional disclosure statement with the board within 10
13 days.

14 Sec. 219. An executive official or employee with direct
15 responsibility for the management of a contract for goods or
16 services on behalf of this state shall not do either of the
17 following:

18 (a) Solicit or accept from a vendor providing goods or
19 services to this state a political contribution to or on behalf of
20 a committee under the Michigan campaign finance act, 1976 PA 388,
21 MCL 169.201 to 169.282.

22 (b) Engage in discussions or negotiations with the vendor
23 providing goods or services to this state under the contract that
24 relate to the direct or indirect employment of the executive
25 official or employee by the vendor.

26 Sec. 221. An executive official or employee shall not
27 represent his or her personal opinion as that of this state or a

1 department or agency of this state. This section does not prohibit
2 an elected executive official or the head of an executive branch
3 department or agency from representing the official position of
4 this state or a department or agency of this state, or from
5 expressing his or her personal opinion on any matter.

6 Sec. 223. An executive official or employee shall use
7 personnel resources, property, and funds under the executive
8 official's or employee's official care and control judiciously and
9 solely in accordance with prescribed constitutional, statutory, and
10 regulatory procedures and not for personal gain or benefit.

11 Sec. 225. (1) An executive official or employee shall not
12 engage in or accept employment or render services for a private or
13 public interest if that employment or service is incompatible or in
14 conflict with the discharge of the executive official's or
15 employee's official duties or if that employment may tend to impair
16 his or her independence of judgment or action in the performance of
17 official duties.

18 (2) An executive official or employee shall not participate in
19 the negotiation or execution of contracts, making of loans,
20 granting of subsidies, fixing of rates, issuance of permits or
21 certificates, or other regulation or supervision relating to a
22 business entity in which the executive official or employee has a
23 financial or personal interest.

24 Sec. 227. (1) A person shall not offer or give anything of
25 value in connection with the official responsibilities of an
26 executive official or employee to any of the following:

27 (a) An executive official or employee.

1 (b) A member of the executive official's or employee's
2 immediate family.

3 (c) An outside employer or business with which the executive
4 official or employee is associated.

5 (d) A customer or client of the executive official or
6 employee.

7 (2) A person shall not induce or attempt to induce an
8 executive official or employee to violate any of the provisions of
9 this chapter.

10 (3) Nothing in this section shall be construed to prohibit a
11 person from receiving a service or benefit, or from using a
12 facility, that is generally available to the public, provided the
13 person does so in the same manner or degree that is available to
14 the general public.

15 (4) Under this section, a corporation, partnership, limited
16 liability company, or other entity is not vicariously liable for
17 the actions of an employee unless the employee acted in the
18 execution of company policy or custom.

19 Sec. 229. This chapter does not prohibit conduct specifically
20 authorized by statute, rule, regulation, the state constitution of
21 1963, or the constitution of the United States.

22 CHAPTER 3. PENALTIES.

23 Sec. 301. The person or body authorized by law to impose
24 disciplinary action shall initiate appropriate proceedings and may
25 take appropriate disciplinary action concerning an executive
26 official or employee who violates this act.

27 Sec. 303. (1) An executive official or employee who has

1 knowledge that another executive official or employee has violated
2 chapter 2 may report the existence of the violation to a
3 supervisor, person, agency, or organization. An executive official
4 or employee who reports or is about to report a violation of
5 chapter 2 is not subject to any of the following sanctions because
6 he or she reported or was about to report a violation of chapter 2:

7 (a) Dismissal from employment or office.

8 (b) Withholding of salary increases that are ordinarily
9 forthcoming to the executive official or employee.

10 (c) Withholding of promotions that are ordinarily forthcoming
11 to the executive official or employee.

12 (d) Demotion in employment status.

13 (e) Transfer of employment location.

14 (2) Whenever an executive official or employee who has
15 reported or who intends to report a violation of chapter 2 is
16 subject to any of the sanctions under this section for reasons
17 other than the executive official's or employee's actions in
18 reporting or intending to report a violation of chapter 2, the
19 appointing or supervisory authority, before the imposition of a
20 sanction, shall establish by a preponderance of evidence that the
21 sanction to be imposed is not imposed because the executive
22 official or employee reported or intended to report a violation of
23 chapter 2.

24 (3) A person that violates this section is responsible for a
25 civil fine of not more than \$1,000.00.

26 (4) A civil fine recovered under this section shall be
27 deposited in the general fund of this state.

1 Sec. 305. (1) A person that alleges a violation of section 303
2 may bring a civil action for appropriate injunctive relief, or
3 actual damages, or both within 90 days after the occurrence of the
4 alleged violation.

5 (2) An action under subsection (1) may be brought in the
6 circuit court for the county where the alleged violation occurred,
7 the county where the complainant resides, or the county where the
8 person against whom the civil complaint is filed resides.

9 (3) The court rendering judgment in an action under subsection
10 (1) may order reinstatement of the executive official or employee,
11 back wages, full reinstatement of fringe benefits and seniority
12 rights, actual damages, or any combination of these remedies as the
13 court considers appropriate. The court may also award the
14 complainant all or a portion of the costs of litigation, including
15 reasonable attorney fees and witness fees, if the court determines
16 that the award is appropriate.

17 (4) As used in subsection (1), "damages" means damages for
18 injury or loss caused by each violation of section 303.

19 Sec. 307. A person that violates this act is subject to a
20 civil fine of not more than \$1,000.00 for each violation, in
21 addition to any other penalty provided in this act or other law of
22 this state. The civil fine shall be imposed by a court of proper
23 jurisdiction or the person or body authorized by law to impose
24 sanctions. A civil fine recovered under this section shall be
25 deposited in the general fund of this state.

26 Sec. 309. A person that violates this act is liable for
27 damages to this state for losses or increased costs incurred by

1 this state as a result of the violation. Damages may be imposed by
2 a court of proper jurisdiction in addition to any other penalty
3 contained in another provision of law.

4 Sec. 311. A person required under chapter 2 to file a
5 transactional disclosure statement who willfully files a false or
6 incomplete transactional disclosure statement or who fails to file
7 a transactional disclosure statement within the time prescribed is
8 guilty of a misdemeanor punishable by imprisonment for not more
9 than 90 days or a fine of not more than \$1,500.00, or both.

10 CHAPTER 4. STATE BOARD OF ETHICS.

11 Sec. 401. (1) The state board of ethics is created as an
12 autonomous entity within the department of technology, management,
13 and budget.

14 (2) The board shall consist of 9 members, including 7 voting
15 members appointed by the governor with the advice and consent of
16 the senate, 1 of whom shall be designated by the governor as
17 chairperson and all of whom shall be residents of this state and
18 not associated with public employment. Not more than 4 members of
19 the board shall be members of the same political party. An
20 individual serving as a member of the board of ethics created under
21 former 1973 PA 196 on the day before the effective date of this act
22 shall serve as a member of the board of ethics created under this
23 chapter until the date on which his or her term as a member of the
24 board of ethics created under former 1973 PA 196 would have expired
25 had this act not been enacted. An individual appointed as a member
26 of the board after the effective date of this act shall be
27 appointed for a term of 4 years. If a vacancy occurs, the governor

1 shall fill the vacancy by appointment for the remainder of the
2 unexpired term.

3 (3) The attorney general and the state personnel director
4 shall serve ex officio as members of the board without the right to
5 vote.

6 (4) Four voting members of the board constitute a quorum, and
7 the affirmative vote of 4 members is necessary for any action.
8 Members of the board shall serve without compensation but may be
9 reimbursed for their actual and necessary expenses incurred in the
10 performance of their duties. With the consent of the civil service
11 commission, the state personnel director shall designate an
12 employee of the department of technology, management, and budget
13 acceptable to the board to act as executive secretary of the board
14 and shall provide clerical or administrative assistance from the
15 department of technology, management, and budget as the board
16 requests.

17 (5) Except as provided in section 403, business conducted by
18 the board shall be conducted in compliance with the open meetings
19 act, 1976 PA 267, MCL 15.261 to 15.275. Notice of the meetings of
20 the board shall be made public in compliance with the open meetings
21 act, 1976 PA 267, MCL 15.261 to 15.275.

22 (6) Except as provided in section 407, a writing prepared,
23 owned, used, in the possession of, or retained by the board in the
24 performance of an official function is subject to the freedom of
25 information act, 1976 PA 442, MCL 15.231 to 15.246.

26 (7) A voting member of the board shall not while a member of
27 the board hold an elective public office or an elective political

1 party office or accept appointment to or become a candidate for an
2 elective public office or an elective political party office.

3 Sec. 403. (1) The board shall do all of the following:

4 (a) Receive complaints concerning alleged violations of this
5 act by an executive official or employee from any person or entity,
6 inquire into the circumstances surrounding the alleged violation,
7 and make recommendations concerning individual cases to the
8 appointing authority with supervisory responsibility for the
9 official or employee whose activities have been investigated. All
10 departments of state government shall cooperate with the board of
11 ethics in the conduct of its investigations. The board shall
12 review, index, maintain on file, dispose of complaints, make
13 notifications, and conduct investigations.

14 (b) Initiate investigations of practices that could affect the
15 ethical conduct of an executive official or employee.

16 (c) Hold public hearings.

17 (d) Administer oaths or affirmations, subpoena witnesses,
18 compel their attendance, require the production of books or records
19 the board considers relevant or material, and receive sworn or
20 unsworn testimony.

21 (e) Render, index, and maintain on file as provided under this
22 chapter advisory opinions upon request from an executive official
23 or employee or his or her appointing or supervisory authority
24 relating to matters affecting ethical conduct of an executive
25 official or employee.

26 (f) Grant waivers under section 411.

27 (g) Prepare and publish nonconfidential special reports and

1 technical studies to further the purposes of this act.

2 (h) Provide training and education to executive officials and
3 employees regarding the requirements of this act.

4 (i) Prepare reports as required under this act and recommend
5 proposed changes to this act.

6 (j) Provide for public inspection of records required under
7 this act as authorized by law.

8 (k) Select provisions of this act, special reports, and
9 technical studies for reproduction and distribution under this act.

10 (l) Examine transactional disclosure statements filed under
11 this act, the supporting records, and other documents. The board
12 shall index and maintain on file for at least 7 years all
13 transactional disclosure statements filed under this act.

14 (m) Promulgate rules in accordance with the administrative
15 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to carry
16 out the provisions of this act and to govern the board's
17 procedures. For a period of 1 year following the effective date of
18 this act, the board shall have full authority to exercise all of
19 its powers and duties in accordance with temporary rules of
20 procedure adopted by the board. Both the temporary rules adopted
21 and administrative rules promulgated may provide without limitation
22 for any of the following:

23 (i) That the board may request the attendance of any witness
24 whose testimony, in the judgment of the board, will aid in the
25 conduct of its investigations.

26 (ii) That a person appearing before the board must submit
27 either sworn or unsworn testimony as the board may decide and may

1 at all times be represented and accompanied by counsel.

2 (iii) That a record of testimony taken before the board or a
3 hearing officer providing hearing officer services for the board
4 shall be made in the manner prescribed by the board.

5 (iv) That the board may, when it appears to the board necessary
6 for the protection of individual rights, hold its meetings and
7 hearings in private. All other meetings and hearings shall be open
8 to the public.

9 (2) Except for matters before the board involving the attorney
10 general or the department of attorney general, the attorney general
11 shall advise the board concerning legal matters in the issuance of
12 advisory opinions, investigative reports, recommendations, and
13 other reports. If a matter before the board involves the attorney
14 general or the department of attorney general, the attorney general
15 shall designate a special assistant attorney general who is not an
16 employee of the department of attorney general to advise the board
17 independently.

18 (3) When a recommendation to an appointing authority is made
19 by the board that affects an employee in the state classified
20 service, the appointing authority shall initiate appropriate
21 proceedings in accordance with the recommendation and pursuant to
22 the rules of the civil service commission.

23 (4) When a recommendation to an appointing authority is made
24 by the board concerning an unclassified employee or appointee, the
25 appointing authority shall take appropriate disciplinary action
26 which may include dismissal, suspension, or removal.

27 (5) In any matter before the board in which the board

1 determines that there may have been a violation of the laws of this
2 state, the board shall forward the matter to the governor and the
3 attorney general or another appropriate law enforcement authority,
4 unless the matter involves the attorney general or the department
5 of attorney general. When a matter involves the attorney general or
6 the department of attorney general, the board shall forward the
7 matter to the governor and the county prosecutor for the county of
8 Ingham or another appropriate law enforcement authority but not the
9 attorney general or department of attorney general.

10 Sec. 405. (1) The board may act only with respect to the
11 executive officials, employees, former executive officials, and
12 former employees covered by this act.

13 (2) The termination of an elected executive official's term of
14 office does not affect the jurisdiction of the ethics board with
15 respect to the requirements imposed on him or her by this act.

16 Sec. 407. (1) If a majority vote of the board determines that
17 there is reason to believe that this act was violated, the board
18 shall initiate an investigative proceeding to determine whether a
19 violation occurred. The board shall mail a notice of the
20 investigation and the nature of the alleged violation to a person
21 under investigation within 5 days after the decision to undertake
22 an investigation is made. Every 60 days until a final determination
23 is made, the board shall mail to the complainant and to the person
24 under investigation notice of the action taken to date by the board
25 along with the reasons for the action or nonaction.

26 (2) Except as otherwise required by law, the board's actions
27 and the records relative to an investigation shall be confidential

1 until the board makes a final determination under this chapter.

2 (3) All state departments, agencies, and institutions shall
3 cooperate with the board when it is conducting an investigation.

4 (4) If the board determines that this act was not violated,
5 the records and actions relative to the investigation and
6 determination shall remain confidential and exempt from disclosure
7 under the freedom of information act, 1976 PA 442, MCL 15.231 to
8 15.246, unless the person investigated requests in writing that the
9 records and actions be made public. If the ethics board determines
10 that this act was violated, the board shall make a recommendation
11 of sanction to the appropriate authority designated in section 409.

12 Sec. 409. (1) After a hearing providing for due process
13 procedural requirements and subject to applicable provisions of
14 law, the board may recommend disciplinary action. The
15 recommendation of the board shall be made to the person or body
16 authorized by law to impose or recommend discipline. For purposes
17 of this act, the person or body authorized by law to impose or
18 recommend discipline for an executive official is 1 of the
19 following:

20 (a) For the governor, the state legislature as authorized in
21 the state constitution of 1963.

22 (b) For an elected executive official other than the governor,
23 the governor.

24 (c) For an executive official appointed by the governor, the
25 governor.

26 (d) For an executive official appointed by an individual or
27 entity other than the governor or for an employee, the appointing

1 authority of the executive official or employee.

2 (2) The board shall conduct and complete the hearing with
3 reasonable promptness. If the board refers the matter to the person
4 or body authorized by law to impose disciplinary action or if the
5 board refers the matter to the attorney general, the county
6 prosecutor for the county of Ingham, or other appropriate law
7 enforcement authority, the board may adjourn the matter pending
8 determination by the person, body, attorney general, prosecutor, or
9 other appropriate law enforcement authority.

10 (3) After a hearing providing for due process procedural
11 requirements, the board may recommend that sanctions and penalties
12 be imposed upon an executive official or employee found by the
13 board to have violated this act. The recommendation of the board
14 shall be made to the person or body authorized by law to impose or
15 recommend sanctions. If ordered to pay a civil fine, the executive
16 official or employee shall pay the fine to the state treasurer for
17 deposit in the general fund.

18 (4) The board may initiate an action or special proceeding in
19 the court of appropriate jurisdiction to obtain damages under
20 section 309.

21 (5) A person other than the board shall not bring an action in
22 court alleging a violation of this act unless all of the following
23 apply:

24 (a) The person initiating the action has first filed a sworn
25 statement with the board alleging the violation by the executive
26 official or employee.

27 (b) Not less than 6 months and not more than 10 months have

1 elapsed since the statement was filed with the board, and the board
2 has failed to file a final determination in the matter.

3 Sec. 411. (1) Upon written application and a showing of
4 compelling need by the executive official or employee, the board
5 may grant the executive official or employee a waiver of a
6 provision of this act.

7 (2) A waiver may be granted only at an open meeting after
8 public notice as provided in the open meetings act, 1976 PA 267,
9 MCL 15.261 to 15.275. The notice shall state that a waiver is being
10 considered. A waiver shall be in writing and shall state the
11 grounds upon which it is granted.

12 (3) Not more than 10 days after granting a waiver, the board
13 shall send a copy of the decision to the executive official or
14 employee, the person or body authorized by law to impose discipline
15 upon the executive official or employee, and the governor. The
16 decision shall include the name of the person requesting the waiver
17 and a general description of the circumstances of the waiver. The
18 board shall index and maintain on file the application, decision,
19 and other records and proceedings relating to a waiver proceeding.

20 Sec. 413. (1) Upon the written request of an executive
21 official or employee, the board shall render a written advisory
22 opinion regarding the interpretation or application of this act.

23 (2) Advisory opinions and requests for advisory opinions shall
24 be indexed and maintained on file by the board.

25 (3) An executive official or employee who has submitted a
26 written request for an advisory opinion to the board may bring a
27 civil action against the board to compel it to issue the advisory

1 opinion. The complaint shall clearly identify the matters or
2 proceedings before the board. An action shall not be brought under
3 this subsection unless not less than 6 months or more than 10
4 months have elapsed since the filing of the request for an advisory
5 opinion and the board has failed to issue an advisory opinion in
6 the matter.

7 (4) If an advisory opinion rendered by the board has not been
8 amended or revoked, it is binding on the board in a subsequent
9 proceeding concerning the person that requested the opinion and who
10 acted in good faith, unless the person omitted or misstated a
11 material fact. The person may rely on the advisory opinion, and a
12 court may receive the opinion as evidence for the person's defense
13 in a civil action.

14 Sec. 415. A person aggrieved by a decision of the board may
15 seek judicial review and relief in a court of proper jurisdiction.

16 Sec. 417. The board shall do both of the following:

17 (a) Make information concerning this act available to each
18 executive official or employee, to the public, and to persons
19 interested in doing business with this state, through appropriate
20 means.

21 (b) Develop educational materials and an educational program
22 for executive officials and employees to inform them of their
23 duties and responsibilities under this act.

24 Sec. 419. (1) The board shall prepare and submit an annual
25 report to the governor and each house of the legislature,
26 summarizing the activities of the board under this act. The report
27 may also recommend statutory or administrative changes to this act.

1 (2) The board shall review this act and the board's rules,
2 regulations, and administrative procedures annually to determine if
3 they set forth clear and enforceable common-sense standards of
4 conduct and promote integrity, public confidence, and participation
5 in state government.

6 Sec. 421. (1) Not more than 90 days after the first meeting of
7 the board, and after then as appropriate, the board shall transmit
8 to each executive official and department copies of the provisions
9 of this act that the board considers necessary for distribution and
10 shall make copies available to the public.

11 (2) The board shall furnish an executive official or employee
12 who is elected, appointed, or employed after the effective date of
13 this act with a copy of the selected provisions of this act within
14 10 days after he or she enters upon the duties of his or her
15 position.

16 (3) The board's failure to comply with the provisions of this
17 section or an executive official's or employee's failure to receive
18 a copy of the provisions of this act does not affect the duty to
19 comply with or the ability to enforce this act.

20 (4) The board shall transmit copies of special reports and
21 technical studies relating to this act and its administration to
22 the governor in a form suitable for distribution.

23 Enacting section 1. 1968 PA 318, MCL 15.301 to 15.310, and
24 1973 PA 196, MCL 15.341 to 15.348, are repealed.